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INTERSTATE COMMERCE COMMISSION

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## LEASE OF RAILROAD EQUIPMENT

by and between

BANKERS TRUST COMPANY,  
as Trustee,

and

PENN CENTRAL TRANSPORTATION COMPANY

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Dated as of April 15, 1970

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**LEASE OF RAILROAD EQUIPMENT**, dated as of April 15, 1970, between BANKERS TRUST COMPANY, as Trustee under a Trust Agreement (hereinafter called the Trust Agreement and said Trustee being hereinafter called the Lessor) dated as of April 15, 1970, with GENERAL ELECTRIC CREDIT CORPORATION and PENN CENTRAL TRANSPORTATION COMPANY, a Pennsylvania corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into Conditional Sale Agreements dated as of April 15, 1970 (hereinafter called the Conditional Sale Agreements), with GENERAL ELECTRIC COMPANY and GENERAL MOTORS CORPORATION (Electro-Motive Division), respectively (hereinafter referred to as the Manufacturers), wherein the Manufacturers have agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Manufacturers have assigned or will assign their respective interests in the Conditional Sale Agreements to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreements on or prior to November 15, 1970 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor

hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under a Conditional Sale Agreement, subject to all the rights and remedies of the Vendor under such Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the appropriate Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and to the appropriate Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semiannual payments, payable on May 15 and November 15 in each year commencing November 15, 1970; *provided, however*, that if any of the payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day. The first such semiannual payment shall be in an amount equal to 1.5051% of the Purchase Price (as such term is defined in the Conditional Sale Agreement pursuant to which such Unit is being acquired by the Lessor) of each Unit subject to this Lease plus an amount equal to the interest payment required to be made by the Lessor on November 15, 1970, pursuant to Article 3 of the Conditional Sale Agreements; the next nine

such semiannual payments shall each be in an amount equal to 4.2% of the Purchase Price of each such Unit; and the last 20 such semiannual payments shall each be in an amount equal to 6.7404% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in immediately available Baltimore funds (including but not limited to the payments required under § 6 hereof) for the account of the Lessor, care of the Vendor at its office at Calvert and Baltimore Streets, Baltimore, Maryland 21203, attention of Corporate Trust Department (or to any assignee of the Vendor pursuant to Section 6 of the Agreements and Assignments between the respective Manufacturers and the Vendor, dated as of April 15, 1970, under which the Conditional Sale Agreements are being assigned to the Vendor). Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Conditional Sale Agreements accrued at the time such payments are due hereunder and, so long as no event of default under the Conditional Sale Agreements shall have occurred and be continuing, any balance shall be paid directly to the Lessor at its offices at 16 Wall Street, New York, New York 10015, attention of Corporate Trust Division.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturers or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units

from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6 and 9 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Conditional Sale Agreements in its capacity as guarantor or otherwise, are subject to the rights of the Vendor under the Conditional Sale Agreements. If an event of default should occur under a Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under a Conditional Sale Agreement. If a Declaration of Default (as defined in the Conditional Sale Agreements) should be made under a Conditional Sale Agreement due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under such Con-

ditional Sale Agreement as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 18 of such Conditional Sale Agreement that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Annex B to the appropriate Conditional Sale Agreements and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

“MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, BALTIMORE, MD., AGENT-OWNER”

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreements. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or

deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal or Canadian (Dominion or Provincial) taxes (other than any federal income tax or any Canadian [Dominion or Provincial] income tax [to the extent that the Lessor receives credit therefor against its United States federal income tax liability] payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms

hereof or the Conditional Sale Agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreements. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor. Prior to making such payment, Lessor shall promptly notify Lessee of the impositions charged or levied, and Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such impositions, at its sole expense.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer or the Vendor pursuant to Article 10 of a Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 10.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to



show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall, within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. In the event of the complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of number

1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of \$4.50 per gross ton for dismantling such Unit. Upon such payment of the salvage value for such Unit, the title to such Unit shall pass to and vest in the Lessee.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1 .....	103.600%	16 .....	81.250%
2 .....	104.254	17 .....	77.264
3 .....	105.097	18 .....	72.704
4 .....	106.129	19 .....	68.671
5 .....	106.439	20 .....	64.060
6 .....	106.816	21 .....	59.408
7 .....	106.547	22 .....	54.097
8 .....	106.218	23 .....	49.369
9 .....	105.324	24 .....	43.973
10 .....	104.232	25 .....	38.973
11 .....	100.900	26 .....	33.269
12 .....	96.989	27 .....	28.981
13 .....	93.594	28 .....	21.954
14 .....	89.334	29 .....	16.366
15 .....	85.565	30 .....	10.000

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks

customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it. Such insurance shall be payable to the Vendor, the Lessor and the Lessee as their interests may appear.

§ 7. *Annual Reports.* On or before April 15, in each year, commencing with the year 1971, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder and/or covered by the Conditional Sale Agreements, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreements shall have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the**

**quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as vendee, under the provisions of Articles 14 and 15 of the Conditional Sale Agreements. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and re-

placements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreements.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit (except for communications, signal and automatic control equipment or devices having a similar use which have been added to the Equipment by the Guarantor, the cost of which is not included in the Purchase Price of the Equipment and which are not required for the operation or use of the Equipment by a railroad subject to regulation by the Interstate Commerce Commission or the Department of Transportation), and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreements) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreements or this Lease or by reason of the owner-

ship of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease, except as otherwise provided in Article 22 of the Conditional Sale Agreements and §15 of this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur :

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreements and such default shall continue for 30 days after written notice from the

Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Conditional Sale Agreements), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease and under the Conditional Sale Agreements shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Conditional Sale Agreements and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree,

by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination. (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which



represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 7.40% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and including, without limitation, (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the increase in the tax liability of the Lessor attributable to the recapture of the Rapid Amortization Deduction (as hereinafter defined) in respect of a Unit which is recaptured as a result of the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, all or any portion of the amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code of 1954, as

amended, or any successor section thereto (hereinafter called the Rapid Amortization Deduction), shall be, for all purposes of this Lease, deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the supplemental rent in respect of such Unit determined as provided in §14 of this Lease.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. It is understood and agreed that the term "Lessor" wherever used in this Lease, including but not limited to the use thereof in §§ 2, 5, 9 and 14, shall include any such assignee.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic, if customary at

the time, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Conditional Sale Agreements. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreements) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; *provided, however*, that no such assignment or transfer shall be made if, after giving effect thereto, any Unit would not be deemed to be “qualified railroad rolling stock” within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended.

The Lessee agrees that during the term of this Lease the Lessee will not regularly use or permit the regular use of any Unit outside the United States of America.

§ 12. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease, the Lessee will (unless the Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any Units to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will

permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

§ 13. *Opinion of Counsel.* On each Closing Date (as defined in the Conditional Sale Agreements), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and has been duly deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act of Canada (and the Lessee has caused or has made appropriate provision to cause notice of such deposit to be duly given promptly after such deposit in the Canada Gazette pursuant to said Section 148); and such filing, recording and deposit will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default

under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 14. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended, to an owner of property, including (without limitation) the Rapid Amortization Deduction (as defined in § 9 of this Lease). If the Lessor, with respect to any taxable year of the Lessor, shall lose, or, in the opinion of independent counsel selected by Lessor and acceptable to Lessee, shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, any portion of the Rapid Amortization Deduction with respect to any Unit as a result of any of the following events:

(a) Any representation, warranty, fact, estimate, opinion or other statement made or stated by the Lessee (or any officer, employee or agent thereof) contained herein, in the Conditional Sale Agreements, in the Assignments (as defined in the Conditional Sale Agreements), in the Finance Agreement (as defined in the Assignments), or otherwise made in writing in connection herewith or therewith, shall prove to be fraudulent, un-



true, incorrect, inaccurate or misleading in whole or in part; or the Lessee (or any officer, employee or agent thereof) shall fail to state any material fact in connection with the transactions contemplated hereby or thereby; or the Lessee shall take any action in respect of its income tax returns or otherwise which shall be inconsistent with, or in contravention of, any of the transactions contemplated hereby or thereby; or the Lessee (or any officer, employee or agent thereof) shall take any other action whatsoever which shall cause the loss or disallowance of any portion of the Rapid Amortization Deduction; or

(b) The failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by it under this Lease or the Conditional Sale Agreements, the Assignments or the Finance Agreement; or

(c) Any use of such Unit which prevents such Unit from being "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended;

the Lessee shall pay the Lessor, as supplemental rent, upon written demand made by the Lessor at any time and from time to time after any portion of such Rapid Amortization Deduction could have been claimed if, in the opinion of said independent counsel, it were allowable or, if claimed and then disallowed, at any time after payment of the tax attributable thereto, the following: (i) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or of any state or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allow-

ances in respect of the payment of any other such taxes); shall be equal to the difference between such Rapid Amortization Deduction for such reason lost or not had or with respect to which the right to claim has been lost or which has been disallowed and the depreciation and/or amortization deduction with respect to such Unit which is allowed to the Lessor, multiplied by the highest effective Federal income tax rate applicable to the Lessor for the taxable year of the Lessor in which such Rapid Amortization Deduction was lost or disallowed, plus (ii) the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss or disallowance of such investment credit. The Lessor shall be entitled to make the written demand referred to in the preceding sentence if the Lessor has (i) upon the advice of said independent counsel, decided that such Rapid Amortization Deduction is not available or (ii) pursuant to a notice of disallowance from the IRS, a copy of which notice shall have been promptly provided to the Lessee, paid the amount in respect of which such written demand is made. The Lessor agrees that if, in the opinion of said independent counsel, a bona fide claim to any Rapid Amortization Deduction exists and with respect to which the Lessee is required to pay supplemental rent to the Lessor hereunder, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or appropriate action deemed reasonable by such independent counsel in order to sustain such Rapid Amortization Deduction. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax paid attributable to any Rapid Amortization Deduction disallowed, computed at the rate of  $\frac{1}{2}$  of 1% per annum in excess of the highest prime rate

of interest charged by the five leading commercial banks in the Borough of Manhattan, City and State of New York, on the date of such payment, from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 14. The Lessor shall not be obligated to take any such legal or appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The indemnity contained in this § 14 shall survive the expiration or other termination of this Lease.

§ 15. *Recording; Expenses.* The Lessee will cause this Lease, the Conditional Sale Agreements and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and this Lease and any assignment hereof to be duly deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act of Canada and to cause notice of such deposit to be duly given in the *Canada Gazette* pursuant to said Section 148. The Lessee will undertake the filing, recording and depositing and refile, re-recording and redepositing required of the Lessor under Article 21 of the Conditional Sale Agreements and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreements or the first assignment thereof by the Manufacturers; and the Lessee will

promptly furnish to the Vendor and the Lessor evidences of all such filing, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto (but not with respect to the assignments by the Lessor referred to in said Article 21 and above) satisfactory to the Vendor and the Lessor. This Lease and the Conditional Sale Agreements shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§ 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 10½% per annum of the overdue rentals for the period of time during which they are overdue.

§ 17. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at P. O. Box 318, Church Street Station, New York, New York 10015; attention of Corporate Trust Division

if to the Lessee, at Six Penn Center Plaza, Philadelphia, Pa. 19104;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 18. *Severability; Effect and Modification of Lease; Modification of Trust Agreement.* Any provision of this

Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

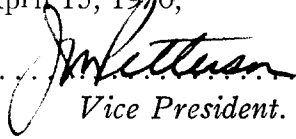
The Lessor agrees not to enter into any amendment or modification of the provisions contained in Articles 2, 6 or 7 of the Trust Agreement without the prior written consent of the Lessee and the Vendor.

§ 19. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of April 15, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

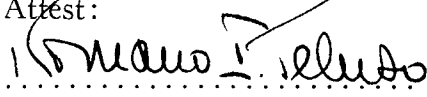
IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

BANKERS TRUST COMPANY, as Trustee under a Trust Agreement dated as of April 15, 1970,

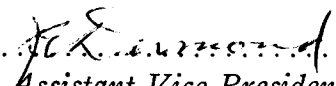
by  .....  
Vice President.

[CORPORATE SEAL]

Attest:

  
.....  
Assistant Secretary.

PENN CENTRAL TRANSPORTATION  
COMPANY,

by  .....  
Assistant Vice President.

[CORPORATE SEAL]

Attest:

  
.....  
Assistant Secretary.

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this 12<sup>th</sup> day of May, 1970, before me personally appeared **J. B. PETERSON**, to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

*Christine Gerace*  
**CHRISTINE GERACE**  
Notary Public, State of New York  
No. 24-1407147  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 30, 1971  
} ss.:

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

On this 30<sup>th</sup> day of April, 1970, before me personally appeared **J. E. DERMOND**, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of PENN CENTRAL TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

*Catherine M. Pfeiffer*  
Notary Public

My commission expires

**CATHERINE M. PFEIFFER**  
Notary Public, Philadelphia, Philadelphia Co.  
My Commission Expires October 8, 1973

# SCHEDULE A

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers (Inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
2000 H. P. Model GP 38 locomotives	8059 dated June 2, 1969, as amended by 8059-3 dated July 1, 1969	La Grange, Illinois	43	7825-7867	\$218,804	\$9,322,568	May and June, 1970 at Gibson, Indiana
2000 H. P. Model SD 38 locomotives	8058 dated June 2, 1969, as amended by 8058-3	La Grange, Illinois	31 4	6925-6959	235,963 236,447	7,314,840 945,790	April and May, 1970 at Gibson, Indiana
2250 H. P. Model U23c locomotives	3590 dated September, 1967	Erie, Pennsylvania	19	6700-6718	257,332	4,889,313	September, October, November, 1970 at Erie, Pennsylvania
3300 H. P. Model U33B locomotives	3430A dated September, 1968	Erie, Pennsylvania	15	2956-2970	259,749	3,896,235	May and June, 1970 at Erie, Pennsylvania